



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0500; FRL-10023-56-Region 4]

Air Plan Approval; Kentucky;

Removal of Asbestos Requirements from Jefferson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is correcting the erroneous incorporation of the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements into the Jefferson County portion of the Kentucky State Implementation Plan (SIP). The continued presence of the asbestos requirements in the Jefferson County portion of the Kentucky SIP is inappropriate and potentially confusing and thus problematic for affected sources, the Commonwealth, local agencies, and EPA. EPA is removing the asbestos requirements because these requirements are not related to the attainment and maintenance of the national ambient air quality standards (NAAQS) and are therefore unrelated to the Clean Air Act (CAA or Act) requirements for SIPs.

DATES: This rule is effective **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0500. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via electronic mail at akers.brad@epa.gov or via telephone at (404) 562-9089.

SUPPLEMENTARY INFORMATION:

I. Background

Section 110 of the CAA requires states to develop and submit to EPA a SIP to ensure that state air quality meets the NAAQS. These ambient air quality standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. EPA-approved SIP regulations and control strategies are federally enforceable.

On October 23, 2001 (66 FR 53658), EPA approved revisions to the Jefferson County portion of the Kentucky SIP,¹ which included miscellaneous rule revisions and the recodification

¹ In 2003, the City of Louisville and Jefferson County governments merged and the "Jefferson County Air Pollution Control District" was renamed the "Louisville Metro Air Pollution Control District." See The History of Air Pollution Control in Louisville, available at <https://louisvilleky.gov/government/air-pollution-control-district/history-air-pollution-control-louisville>. However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading "Air Pollution Control District of Jefferson County." Thus, to be consistent with the terminology used in the SIP, EPA refers throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the "Jefferson County" regulations.

of Air Pollution Control District (APCD) of Jefferson County regulations. These revisions were submitted to EPA on May 21, 1999, by the Commonwealth of Kentucky on behalf of Jefferson County. Among these revisions were requirements for permitting the demolition and renovation of facilities with asbestos, in accordance with 40 CFR part 61, subpart M, *National Emission Standard for Asbestos*. The asbestos requirements were adopted by Jefferson County in paragraphs 1.3, 5.3, and 5.6 of Regulation 2.03, *Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*, and this regulation was part of the recodified rules included in the May 21, 1999, submittal. In the October 23, 2001, final rule, EPA inadvertently incorporated the asbestos requirements in Regulation 2.03, *Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*, into the Jefferson County portion of the Kentucky SIP. The version of the rules incorporated into the SIP were effective in Jefferson County on December 15, 1993.

Section 110(k)(6) of the CAA provides EPA with the authority to make corrections to prior SIP actions that are subsequently found to be in error in the same manner as the prior action, and to do so without requiring any further submission from the State.² While section 110(k)(6) provides EPA with the authority to correct its own “error,” nowhere does this provision or any other provision in the CAA define what qualifies as “error.” Thus, EPA believes that the term should be given its plain language, everyday meaning, which includes all unintentional, incorrect, or wrong actions or mistakes.

The May 21, 1999, submission contained changes to Regulation 2.03, *Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*, that contain asbestos requirements in paragraphs 1.3, 5.3 and 5.6. EPA’s October 23, 2001, approval of these requirements into the Jefferson County portion of the Kentucky SIP was

² Section 110(k)(6) states that “Whenever the Administrator determines that the Administrator’s action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.”

in error. These paragraphs are appropriate for State and local agencies to adopt and implement, but it is not necessary or appropriate to incorporate them into the applicable SIP because asbestos requirements are not related to the attainment and maintenance of the NAAQS. EPA proposed to remove these paragraphs from Regulation 2.03 in a notice of proposed rulemaking on March 4, 2021, and received no comments. *See* 86 FR 12554. EPA is therefore removing these paragraphs from the SIP.

II. Incorporation by Reference

In this document, EPA is amending regulatory text that includes incorporation by reference. Specifically, EPA is removing paragraphs 1.3, 5.3, and 5.6 (asbestos requirements) of Regulation 2.03, *Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*, from the Jefferson County portion of the Kentucky SIP, which is incorporated by reference in accordance with requirements of 1 CFR 51.5. The remainder of Regulation 2.03, *Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*, will remain incorporated in the Jefferson County portion of the Kentucky SIP. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

III. Final Action

EPA is removing paragraphs 1.3, 5.3, and 5.6 of APCD Regulation 2.03, *Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*, from the Jefferson County portion of the SIP because they are not related to the attainment and maintenance of the NAAQS.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40

CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 29, 2021.

John Blevins,
Acting Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S - Kentucky

2. Section 52.920(c) is amended in Table 2 under “Reg 2 – Permit Requirements” by revising the entry for “2.03” to read as follows:

§52.920 Identification of plan.

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(c) * * *

TABLE 2 – EPA-Approved Jefferson County Regulations for Kentucky

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
**	*	*	*	*	*
Reg 2 – Permit Requirements					
**	*	*	*	*	*
2.03	Permit Requirements – Non-Title V Construction and Operating Permits and Demolition/Renovation Permits	10/23/01	66 FR 53660	12/15/93	Except for paragraphs 1.3, 5.3 and 5.6 regarding asbestos demolition, which were removed from the federally approved SIP by EPA on [Insert date of publication in FEDERAL REGISTER].
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